

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>PHYLLIS BECK</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,003,601
<b>DEAN &amp; DELUCA BRANDS, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>ATLANTIC MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier appealed the June 21, 2002 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

**ISSUES**

This is a claim for an April 1, 2002 accident. In the June 21, 2002 preliminary hearing Order, Judge Barnes awarded claimant temporary total disability benefits after finding that claimant sustained a work-related injury and that claimant was later terminated from an accommodated position.

Respondent and its insurance carrier contend Judge Barnes erred. They argue the Judge exceeded her jurisdiction by awarding claimant temporary total disability benefits under these facts. They contend claimant was terminated from an accommodated position due to absenteeism unrelated to her work-related injury. Accordingly, respondent and its insurance carrier request the Board to reverse the preliminary hearing Order and deny claimant's request for benefits.

Conversely, claimant contends the Board does not have jurisdiction to review the June 21, 2002 preliminary hearing Order. Claimant argues this appeal does not address any of the issues set forth in K.S.A. 44-534a that are subject to review from a preliminary hearing order. And as that statute empowers a judge to award temporary total disability

benefits at a preliminary hearing, Judge Barnes did not exceed her power or authority by awarding those benefits. Accordingly, claimant requests the Board to dismiss this appeal.

The only issues before the Board on this appeal are:

1. Does the Board have jurisdiction to review the preliminary hearing Order and decide the issue of whether claimant meets the definition of temporary total disability?
2. If so, is claimant entitled to receive temporary total disability benefits for the period from April 25, 2002, until she is released to substantial and gainful employment?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and the parties' arguments, the Board finds and concludes:

1. The appeal should be dismissed as the Board does not have the jurisdiction to review this preliminary hearing issue.
2. This is an appeal from a preliminary hearing order. Accordingly, the Board does not have jurisdiction to review every alleged error in fact or in law. In preliminary hearing matters, the Board's jurisdiction is specifically limited by K.S.A. 44-534a to the following issues, which are deemed jurisdictional:

- (1) Did the worker sustain an accidental injury?
- (2) Did the worker's accidental injury arise out of and in the course of employment?
- (3) Did the worker provide the employer with both timely notice of the accidental injury and timely written claim?
- (4) Are there any defenses that will defeat the compensability of the claim?

K.S.A. 44-534a(a)(2) provides, in part:

A finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board. Such review by the board shall not be subject to judicial review. . . . Except

as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

Additionally, the Board may review other preliminary hearing awards when a judge exceeds his or her jurisdiction. That authority is provided by K.S.A. 2001 Supp. 44-551(b)(2)(A), which provides, in part:

If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing. . . .

3. The administrative law judges have the jurisdiction at preliminary hearings to award temporary total disability benefits and medical compensation.<sup>1</sup> Accordingly, the judges have the authority at preliminary hearings to determine, rightly or wrongly, on a case-by-case basis whether a worker's injury is severe enough to warrant an award of temporary total disability benefits.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>2</sup>

4. As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.<sup>3</sup>

**WHEREFORE**, the Board dismisses the appeal, leaving the June 21, 2002 Order in full force and effect.

**IT IS SO ORDERED.**

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<sup>1</sup> K.S.A. 44-534a(a)(2).

<sup>2</sup> *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

<sup>3</sup> K.S.A. 44-534a.

Dated this \_\_\_\_ day of August 2002.

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BOARD MEMBER

- c: Garry L. Howard, Attorney for Claimant  
J. Donald Lysaught, Jr., Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge  
Director, Division of Workers Compensation